GOVERNMENT OF ANDHRA PRADESH
ABSTRACT

Public Services - Commercial Taxes Department - Sri V. Badrinath,the then Commercial Tax Officer, Khairatabad and presently and presently Asst. Commissioner(ST) (Retd.) - Allegation of irregularities in assessing to refund of taxes in respect of M/s.Ambience Constructions (I) Limited, Hyderabad - Departmental proceedings under Rule 20 of Andhra Pradesh Civil Services (Classification, Control and Appeal) Rules, 1991 - Articles of Charges - Issued.

REVENUE (VIGILANCE.II) DEPARTMENT

G.O.Rt.No.734 **Dated:09-09-2020**

Read the following:

1. From the CC(ST), AP, Vijayawada, CCT's Ref. No. V1/211/2017, dated 03.02.2020.
2. G.O.Ms.No.257, Revenue (Vig.II) Department, dt.09-09-2020.

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O R D E R :-

In continuation of the orders issued in the reference 2nd cited, It is proposed to hold an Inquiry against Sri V. Badrinath, the then Commercial Tax Officer, Khairtabad and presently Assistant Commissioner (State Tax) (Retired) on the Allegation of irregularities in assessing to refund of taxes in respect of M/s.Ambience Constructions (I) Limited, Hyderabad in accordance with the procedure laid down in Rule-20 of the Andhra Pradesh Civil Services (Classification, Control & Appeal) Rules, 1991.

2. The substance of the imputations of misconduct or misbehaviour in respect of which the inquiry is proposed to be held is set out in the enclosed statement of article of charge (Annexure-I). A statement of imputations of misconduct or misbehaviour in support of the article of charge is also enclosed in Annexure-II. A list of documents by which, and a list of witnesses by whom the articles of charges are proposed to be substantiated are enclosed in Annexure-III and IV.

3. Sri V. Badrinath, the then Commercial Tax Officer, Khairtabad and presently Assistant Commissioner (State Tax) (Retired) is directed to submit his explanation within 10 days from the date of receipt of this order.

4. Sri V. Badrinath, the then Commercial Tax Officer, Khairtabad and presently Assistant Commissioner (State Tax) (Retired) is informed that an inquiry will be held only in respect of those articles of charges which are not admitted. He should, therefore, specifically admit or deny each article of charge.

5. Sri V. Badrinath, the then Commercial Tax Officer, Khairtabad and presently Assistant Commissioner (State Tax) (Retired) is further informed that if he does not submit his written statement of defence on or before the time specified in para-3 above, further action will be processed based on the material available.

6. Attention of Sri V. Badrinath, the then Commercial Tax Officer, Khairtabad and presently Assistant Commissioner (State Tax) (Retired) is invited to Rule-24 of Andhra Pradesh Civil Services (Conduct) Rules, 1964 under which no Government Servant shall bring or attempt: to bring any political or outside influence to bear upon any superior authority to further his interest in respect of matters pertaining to his service under the Government. If any representation is received on his behalf from another

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person in respect of any matter dealt with in these proceedings it will be presumed that Sri V. Badrinath, the then Commercial Tax Officer, Khairtabad and presently Assistant Commissioner (State Tax) (Retired) is aware of such representation and that it has been made at his instance and action will be taken against him for violation of Rule-20 of the Andhra Pradesh Civil Services (Conduct) Rules, 1964.

(BY ORDER AND IN THE NAME OF THE GOVERNOR OF ANDHRA PRADESH)

RAJAT BHARGAVA
SPECIAL CHIEF SECRETARY TO GOVERNMENT

To

1. Sri V. Badrinath, the then Commercial Tax Officer, Khairtabad and presently Assistant Commissioner (State Tax) (Retired) (Through the Chief Commissioner of State Tax, Andhra Pradesh, Vijayawada.)
2. The Chief Commissioner of State Tax, Andhra Pradesh, Vijayawada. (With a request to cause service of the Charge Memo, on the individual and Send the served copy of this office.)

Copy to

3. The Commissioner of Commercial Taxes, Hyderabad,Revenue(Vigilance) Department, Telangana State Secretariat, Hyderabad.
4. The Director General, Vigilance & Enforcement, BRKR Bhavan, Hyderabad.
5. The Secretary to Vigilance Commissioner, Telangana State Vigilance Commissioner, Hyderabad.
6. The Secretary to Vigilance Commissioner, Andhra Pradesh Vigilance Commissioner, Velagapudi.

Sf/Sc

//FORWARDED:: BY ORDER//

SECTION OFFICER

ANNEXURE-I

STATEMENT OF ARTICLE OF CHARGE FRAMED AGAINST SRI V.BADRINATH, FORMER COMMERCIAL TAX OFICER, KHAIRTABAD AND PRESENTLY ASSISTANT COMMISSIONER (STATE TAX) (RETD.), VIJAYAWADA, ANDHRA PRADESH.

ARTICLE OF CHARGE:

Sri V. Badrinath, the then Commercial Tax Officer, Khairtabad and presently Asst. Commissioner(ST) (Retd.) committed grave irregularities in Assessing to Refund of taxes to a tune of Rs.44,20,705/- for the year 2008-09 in respect of M/s. Ambience Constructions (I) Ltd., Hyderabad, in violation of the existing provisions of the Act. He while making the assessment has not considered the provisions of the A.P. VAT Act and Rules i.e., Sec. 22(3-A), Sec.57, Rule 18 (3)(b) and also G.O.Ms.No.94 Irrigation and CAD (PW-COD) Department dt.01-07-2003, CCT's circular instructions issued in CCT's Ref.No.AIII(1)/150/2012, dt.26-03-2013 and CCT Ref. No.BVI(1)/76/2007 dt.04-06-2008. Thus, he failed to exercise clue diligence in assessing the dealer to excess Tax which has ultimately given rise to Refund of Rs.44,20,705/-. It is a clear case of dereliction of duty, willful negligence and criminal misconduct on the part of the said officer.

Sri V. Badrinath, the then Commercial Tax Officer, Khairtabad and presently Asst. Commissioner (ST) (Retd.), by his above mentioned acts has exhibited indiscipline lack of integrity and devotion to duty, unbecoming of a Government Servant and thereby contravened Rule 3 (1) (2) & (4) of Andhra Pradesh Civil Services (conduct) Rules 1964.

RAJAT BHARGAVA
SPECIAL CHIEF SECRETARY TO GOVERNMENT

//FORWARDED:: BY ORDER//

SECTION OFFICER

ANNEXURE - II

STATEMENT OF IMPUTATIONS OF MISCONDUCT OR MISBEHAVIOIUR IN SUPPORT OF THE ARTICLE OF CHARGE FRAMED AGAINST SRI V.BADRINATH, FORMER COMMERCIAL TAX OFICER, KHAIRTABAD AND PRESENTLY ASSISTANT COMMISSIONER (STATE TAX) (RETD.), VIJAYAWADA, ANDHRA PRADESH.

On the allegations of illegal assessment for refund of taxes in respect of M/s. Ambience Constructions (I) Ltd., Hyderabad, the Vigilance & Enforcement has conducted an enquiry.

It reveals that the amount of tax collected at source (TCS), which was added separately over and above the consideration for the execution of work, payable by the contractor, was unlawfully refunded for the following reasons:

1. M/s. Ambience Construction (India) Limited, the contractor and the Government being a Taxing and Collecting Authority and also being a contractee, made a provision for works contract Tax separately to the estimates while awarding works to the contractors so that such Tax which was added to the estimates is collected VAT while making payments to the contractor. This is known as Tax collection at source (TCS) and since it is an exclusive provision for works contract awarded by the Government, necessary statutes were also inserted in the APVAT Act and Rules and it shall neither be refunded nor adjusted against the future liabilities of the contractors.
2. Sri V. Badrinath, during the enquiry has stated that assessment of M/s, Ambience Constructions (India) Ltd., for the year 2008-09 was made basing on the books of accounts as prescribed under Rule 31 of the A.P. VAT Rules. The assessment of the dealer is not a matter of dispute or under present enquiry. But the excess of Rs.44,20,705/- over the liability as determined in the order was refunded subsequently when the same was provided by the Contractee Government Department as seen from the estimates.
3. He stated that the refund arose due to the input tax credit and claimed that no provision in the Act prescribes forfeiture of input tax credit. The input tax credit is the tax which was charged on the purchases made for the purpose of utilizing in the execution of works. The dealer was awarded contract by the Government: after estimation was prepared by the contractee Government department. The amount was given by the Government: to the dealer contractor to purchase material which is used in the execution of works. Thus the excess amount due to input tax credit: cannot be claimed as refund by the dealer when the cost for the purchase of material was borne by the Government and the claim of the officer that: excess of tax to the credit of the dealer arising out of their input tax credit was recommended for refund is found without any ground and contrary to Government Orders.
4. He has completed assessment on 09.06.2009 without forfeiting the excess of Rs. 44,20,705/- though Rule 18 (3) (b) prohibits any refund of excess amount to be refunded to the dealer when the contract belongs to Government and tax was provided in the estimates. The estimates clearly shows tax component in the classification of the cost of the project. The officer has deliberately violated the provisions of Rule 18 (3) (b) which resulted in the refund and outflow of Government Revenue.

The Rule 18 (3) (a) and 18 (3) (b) cannot be applied to the financial year of the assessment 2008-09 is untenable on the ground that the provisions of the said rules were given affect from 01.05.2009 and the assessment was completed on 09.06.2009. But pursuant to the introduction of said Rules there should not be any approvals of refunds in the cases where tax component was earmarked in the estimates of the Government contracts. Therefore, his statement is devoid of merit and not worthy of consideration.

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5. A close and careful reading of the judgment as referred by the officer in the case of L & T Vs State of Andhra Pradesh in W.P. No. 1278/2006 reveals that the petitioner argued as under:-

"that the provisions of the VAT Act which make it obligatory on the contractee to deduct the specified amount from out of the payments due to the petitioner under the contracts where there is not taxable event is nothing but extraction of money without ascertaining the facts whether the petitioner is in fact liable to pay the tax and if the petitioner is liable the exact amount which the petitioner is liable to pay". The Hon'ble A.P. High Court adjudicated as under:

"In the circumstances, we have no option but to allow the writ petition declaring Sections 22 (3) and (4) of the VAT Act unconstitutional and beyond the competence of the Legislature of the State of Andhra Pradesh. In view of the said conclusion, we do not deem it necessary to examine the constitutional validity of Explanation VI of Section 2 (28) and Section 2 (29) (c) (i) (a) and we leave the question open to he determined in a more appropriate case where there is more concrete factual foundation for the examination of the question".

The issue raised was that tax need not be deducted from the payment due to the petitioner where there is no taxable event. But nothing related to the forfeiture was dealt with. It is not correct to say that no provision for forfeiture was in existence till 01.05.2009. The dealer cannot be enriched unduly with the Government money since it was provided in the estimates of the projects. The case referred by the officer of W.P. No. 1278/2006 and allowed by the Andhra Pradesh High Court relates to obligation of the contractee to deduct the specified amount from out of the payments due to the petitioner under the contracts where there is no taxable event but not the subject of forfeiting the excess determined tax in respect of Government contracts.

6. He stated that the G.O. Ms. No. 11 issued under section 76 was struck down is factually incorrect since the provisions of G.O. Ms. No. 11 is followed by t:he contractee departments even now which provides for adding VAT in the estimates only to be collected by way of deduction at the time of making payments. The statement that G.O. Ms. No. 11 could not be, applied is not tenable. He even failed to abide by the Commissioners instructions issued in the circulars in references CCT's Ref. No. BVI(1)/76/2007, dt: 04.06.2008, CCT's Ref. No. AII(2)/291/2012, dt: 07.02.2013, CCT's Ref. No. AIII(1)/150/2012, dt: 26.03.2013.

Thus, by the above mentioned Acts, Sri V. Badrinath, the then Commercial Tax Officer, Khairtabad and presently Commercial Tax Officer, Central Computer Wing, O/o Commissioner (CT), Andhra Pradesh, Vijayawada, has showed gross negligence while doing his official duty caused loss of revenue to the State exchequer, and in not obeying the Government orders and as well as instructions of the higher authorities and contravened Rule 3 of the APCS (Conduct) Rules, 1964.

RAJAT BHARGAVA
SPECIAL CHIEF SECRETARY TO GOVERNMENT

//FORWARDED:: BY ORDER//

SECTION OFFICER

ANNEXURE - III

LIST OF DOCUMENTS BY WHICH ARTICLE OF CHARGE FRAMED AGAINST SRI V.BADRINATH, FORMER COMMERCIAL TAX OFICER, KHAIRTABAD AND PRESENTLY ASSISTANT COMMISSIONER (STATE TAX) (RETD.), VIJAYAWADA, ANDHRA PRADESH ARE PROPOSED TO BE SUSTAINED:

1. Vigilance Report No.15/(C.No.17/V&E/R1/2014), dt: 31.01.2014.
2. Copy of G.O.Ms.No.11, dt.29-07-2005.
3. Copy of G.O. No. 94, dt. 01-07-2003.
4. Copy of Circular of Commissioner (CT) in ref.No. AIII(1)/150/2012, dt. 26-03-2013.
5. Copy of CCT's Ref. No. E3V(I)/76/2007, dt. 04-06.-2008.

RAJAT BHARGAVA
SPECIAL CHIEF SECRETARY TO GOVERNMENT

//FORWARDED:: BY ORDER//

SECTION OFFICER

ANNEXURE – IV

LIST OF WITNESSES BY WHOM ARTICLE OF CHARGE FRAMED AGAINST SRI V.BADRINATH, FORMER COMMERCIAL TAX OFICER, KHAIRTABAD AND PRESENTLY ASSISTANT COMMISSIONER (STATE TAX) (RETD.), VIJAYAWADA, ANDHRA PRADESH ARE PROPOSED TO BE SUSTAINED:

- NIL –

RAJAT BHARGAVA
SPECIAL CHIEF SECRETARY TO GOVERNMENT

//FORWARDED:: BY ORDER//

SECTION OFFICER